

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STRYKER CORPORATION and
HOWMEDICA OSTEONICS CORP.,

Plaintiffs,

vs.

XL INSURANCE AMERICA, INC., formerly
known as WINTERTHUR INTERNATIONAL
AMERICA INSURANCE COMPANY,

Defendant.

Case No.: 1:17-cv-00066-PLM-PJG
HON. PAUL L. MALONEY

**XL INSURANCE AMERICA, INC.’S
MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendant XL Insurance America, Inc. formerly known as Winterthur International America Insurance Company (“XL”), files this motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) against Plaintiffs, Stryker Corporation (“Stryker”) and Howmedica Osteonics Corp. (“Howmedica”) (collectively, “Plaintiffs”), and in support thereof, and as more fully stated in the accompanying brief in support, states as follows:

1. In this action, Stryker seeks to recover from XL \$6.2 million with respect to the \$7.6 million in settlements of certain underlying Uni-Knee lawsuits, which Stryker paid and which were not reimbursed by XL or Stryker’s excess insurer, TIG.

2. Stryker is not entitled to recover from XL any more in indemnity for settlements of the Uni-Knee lawsuits because the Sixth Circuit and this Court have held the XL policy limits were properly exhausted. *See Stryker Corp v. XL Ins. America*, 735 F. 3d 349, 356-357 (6th Cir. 2012); *Stryker Corp. v. XL Ins. Am., Inc.*, No. 1:05-CV-51, 2013 WL 504646, at *5 (W.D. Mich. Feb. 8, 2013); and *Stryker Corp v. XL Ins. America*, 576 F. App’x 496 (6th Cir. 2014).

3. Stryker is not entitled to recover from XL the amount of indemnity to which Stryker was entitled to recover from TIG, but which it could not obtain due to its own failure to comply with the TIG excess policy. *See Stryker Corp. v. National Union Ins. Co. of Pittsburgh, PA*, 842 F.3d 422 (6th Cir. 2016).

4. Stryker's claim against XL is barred by the doctrines of res judicata, collateral estoppel, issue preclusion, and the prohibition against splitting causes of action.

5. Under Michigan law, Stryker has no bad faith claim against XL.

6. The undersigned sought concurrence in this motion from Plaintiffs' counsel via e-mail correspondence sent on Monday, March 27, 2017, but concurrence was not obtained.

WHEREFORE, for the reasons stated herein and more fully in the accompanying Brief in Support, XL respectfully requests that this Court enter an order granting XL's motion for judgment on the pleadings and grant such other and further relief as is just and proper.

Respectfully submitted this 27th day of March, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the **MOTION FOR JUDGMENT ON THE PLEADINGS** has been furnished to the below listed parties via CM/ECF on this 27th day of March, 2017.

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